

1982 WL 189533 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 17, 1982

*1 The Honorable J. Leon Gasque
Assistant Director State Law
Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221

The Honorable H.C. McLellan
Director of Athletics
Jervy Center
Clemson University
Clemson, South Carolina 29631

Gentlemen:

You have requested the opinion of this office whether persons may possess and consume alcoholic liquors in rooms located in Clemson Memorial Stadium and leased to private individuals. It is the opinion of this office that under the facts related the possession and consumption of liquors is valid.

Pursuant to the facts conveyed to this office, Clemson University intends to rent executive box suites to individuals to be used during certain designated times, primarily on days that football games are played in the stadium. Each suite is self-contained with a separate entrance and walled on all four sides [the front side being a glass wall]. During the designated times, the individual who rents the suite maintains exclusive control and possession. He may admit guests to his suite and add certain decorations and furnishings. The written rental agreement is entitled a "license agreement", although the term lease is used therein as well as the term license.

Section 61-5-20, South Carolina Code of Laws, 1976, as amended, generally prescribes the situations wherein liquor may be lawfully possessed and consumed. Section 61-5-20(2)(c) provides:

(2) Any person may possess or consume alcoholic liquors:

(c) In separate and private areas of an establishment whether or not such establishment includes premises which are licensed pursuant to subsections (3) and (4) of this section, where specific individuals have leased such areas for a function not open to the general public.

The requisites to lawful possession pursuant to this provision are apparent. First, a separate and private area must be leased to specific individuals. Second, the lease must be for a function not open to the general public.

The facts as related appear to support that a separate and private area is leased to specific individuals, however, this conclusion is clouded somewhat by the designation of the rental agreement as a license agreement and the parties thereto as licensor and licensee, respectfully. The content of the agreement reflects an intention to lease the premises instead of to grant a mere license. The tenant assumes possession and control of the designated premises during certain defined times. In addition, his possession is exclusive to all others. Further, the tenant may make some decorative changes and has the sole right to invite guests to the premises. See, [McClellan v. Taylor](#), 54 S.C. 430, 32 S.E. 527, for a discussion of the distinction between a lease and a licensee. ¹

The designation of the agreement as a license agreement casts doubt on this conclusion, however, as the intention of the parties generally controls. Although, “if the instrument or agreement in terms grants an interest in or a right to use and occupy the land it may not be construed as a mere license, notwithstanding it is called a ‘license’ by the parties.” 53 C.J.S. “Licenses” § 79. If the license agreement was amended by redesignating it as a lease and the parties thereto as lessor and lessee, it would then appear to be a lease as that term is used in § 61–5–20(2)(c).

*2 It is clear from the related facts that the premises in question is a separate and distinct area of the stadium. Thus, this qualification of the statute is met.

Further review supports that the function is not open to the general public. Function is generally defined as it relates herein as an often formal public or social ceremony or gathering (as a dinner or reception). Webster's Third New International Dictionary “Function at 920, 921.

The social gathering held by the tenant upon the premises is clearly private and open to his guests only. This is true, even though the purpose of the private social gathering may be to watch a football game which is a public event.

Thus, you are advised that possession and consumption of alcoholic beverages in the private suites located within the Clemson Memorial Stadium by the lessee and his guests is lawful. However, the ambiguity of the rental agreement leaves this conclusion in some doubt.

This opinion does not address Clemson's authority to lease the property in question.

Very truly yours,

Daniel R. McLeod
Attorney General

Footnotes

- 1 ' In drafting § 61–5–20(2)(c), the General Assembly is presumed to have used the term “leased” in its well defined legal meaning. [Purdy v. Moise](#), 223 S.C. 298, 75 S.E.2d 605; [Coakley v. Tidewater Construction Corp.](#), 194 S.C. 284, 9 S.E.2d 724. Such a usage is consistent with a reading of the provision.

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